

Serial No. 10/824,110

Reply to Office Action of April 27, 2005

REMARKS

Applicant notes with appreciation the opportunity to discuss this application telephonically with Examiner Szumny on July 7, 2005. With the entry of this amendment claims 1-18 remain pending in the application. Claim 10 has been amended to recite that the first tab portion and third tab portion differ in thickness. Support for this amendment is found in the specification at page 4, lines 5-8 and in claim 18 as originally filed. As such, it is submitted that no new matter has been added to the application by way of this amendment. Currently, claims 1, 2, 4-12 and 14-18 stand rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,401,304 to Dossett in view of U.S. Patent No. 5,367,809 to Ross. Additionally, claims 3 and 13 have been rejected under 35 U.S.C. §103(a) over Dossett in view of Ross and further in view of U.S. Patent No. 4,198,772 to Furuta.

**Remarks Directed to Rejection of Claims 1, 2, 4-12 and 14-18
Under 35 U.S.C. §103(a) over Dossett in View of Ross**

In response to the well-reasoned Office Actions provided with respect to this application, Applicant rebuts the *prima facie* obviousness rejection on the basis that the pending claims recite limitations not afforded by the prior art reference combination. In particular, claim 1, line 5 recites "an aperture having a flange therein" while claim 10, lines 7-8 recites that the "third tab portion thickness [is] different than the first tab portion thickness."

With respect to claim 1, the aperture has a flange extending therein as is well depicted in Figures 1 and 4 and the accompanying text found on page 3, line 12 – page 4, line 2. The flange as recited in claim 1 intercedes into the aperture and is characterized by a thickness less than that of the tab portion (first or third) that defines the boundaries of the aperture. In this way, a stud can be press fit into an aperture that otherwise would not be deformable to receive the stud

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without compromising the theft deterrent considerable thicknesses of the first and third tab portions.

In contrast to pending claim 1, Dossett teaches a circular aperture 14 (see Figure 2) with no accommodation for the receipt of adhesive area 19. Since adhesive area 19 flares to a width greater than that of aperture 14, the adhesive area 19 necessarily must deform to be received within hole 14. Ross teaches an aperture 20 having slits radiating into the aperture defining second end 13 such that the slits create a zone of deformation in the second end to allow the enlarged portion 16 to pass through the aperture 20. As such, Dossett fails to teach the limitation of a flange within the aperture and Ross does nothing to bolster Dossett in this regard. Combining the teachings of Dossett and Ross, one obtains a portion having an aperture with radiating slits there around to accommodate an enlarged portion of a stud found on another portion that upon coupling creates a loop.

Applicant submits that the combination of Dossett and Ross with regard to the aperture is different than that recited in the pending claim and is further submitted to fail to achieve the theft-deterrent aspect of the present invention. As detailed in the background of the invention at page 1, line 17 – page 2, line 1, theft and damage of a display is associated with the ease with which a stud is released from the securing aperture. The prior art reference aperture of Ross is typical of this prior art where the stud is readily pulled free from the aperture and indeed must be so to provide reuse of the device for matching pairs of laundry items. Alternatively, the aperture of Dossett with no radiating slits to accommodate a stud would perform the theft deterrent even more poorly. As such, it is submitted that claim 1 and those claims that depend therefrom are nonobvious over the prior art reference combination of Dossett and Ross.

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With respect to claim 10, the claim limitation of the first and third tab portions having differing thicknesses is nowhere found in the prior art references Dossett, Ross or the combination thereof. As this limitation is lacking in the prior art reference combination, Applicant submits that it is entitled to patentable weight.

An inventive merchandise hanger has first, second and third portions having considerable thickness to inhibit theft. The theft deterrent is manifest in that the planar surface is sufficiently thick to prevent bending and therefore easy insertion into concealment on a thief such as in a pocket; the second portion, while thinner than the first portion and third portion, is also of considerable thickness so as to discourage scission to remove a product suspended from the resulting loop; and lastly, the first and third tab portions are of a thickness to discourage disengagement of the stud from the aperture. Having the first and third portions of different thickness means that any leverage inserted on the loop will necessarily deform the thinner portion more so than the thicker portion resulting in a stronger loop. Additionally, an excessively long stud according to the present invention becomes a point of weakness at the stud base where a strong connection between the aperture and the stud head is negated by pullout of the stud at its base.

In the course of the telephonic interview held on July 7, 2005, between Examiner Szumny and Applicant's representative, Avery Goldstein, there was a discussion as to finding support for such advantages as recited herein with regard to the advantages of the pending claims. Applicant submits that it is improper to require evidence and arguments responsive to an obviousness rejection to be found within the specification in order to be considered.

The court has stated in regard to evidence and arguments in response to an obviousness rejection being unpersuasive because the "specification is virtually silent on the matter of any

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purported advantage” and “does not state that the claimed [advantage] solves any particular problem or produces any unexpected result” that:

Because the Board was required to consider the totality of the record, the Board was not free to disregard the evidence and arguments presented by Chu in response to the obviousness rejection. Additionally, the Board erred in apparently requiring Chu's evidence and arguments responsive to the obviousness rejection to be within his specification in order to be considered. To require Chu to include evidence and arguments in the specification regarding whether placement of the SCR catalyst in the bag retainer was a matter of “design choice” would be to require patent applicants to divine the rejections the PTO will proffer when patent applications are filed.

In re Chu, 36 USPQ2d 1089, 1094 (CAFC).

Applicant submits that the pending claims recite limitations not found in the prior art reference combination and that such limitations are entitled to patentable weight on the basis of the above remarks. Reconsideration and withdrawal of the rejection as to claims 1, 2, 4-12 and 14-18 under 35 U.S.C. §103(a) over Dossett in view of Ross is solicited.

**Remarks Directed to Rejection of Claims 3 and 13 Under 35 U.S.C. §103(a)
Over Dossett in View of Ross and Further in View of Furutu**

On the basis of the limitations detailed above with regard to Dossett and Ross and the fact that Furutu fails to bolster these limitations, Applicant submits that claims 3 and 13 are likewise allowable on the basis of pendency from an independent claim now believed to be in allowable form. Additionally, the openings that are the subject matter of claims 3 and 13 provide for improved molding characteristics as detailed at page 4, line 20 – page 5, line 2. The prior art reference combination fails to provide one of ordinary skill in the art with the motivation to strengthen an otherwise disposable device per Dossett or Ross.

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As such, reconsideration and withdrawal of the rejection as to claims 3 and 13 under 35 U.S.C. §103(a) over Dossett in view of Ross and further in view of Furutu is solicited.

Summary

Claims 1-18 remain pending in the application. By way of this amendment, claim 10 has been amended. Reconsideration and allowance of the claims is solicited.

Respectfully submitted,

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Janice R. Kuehn


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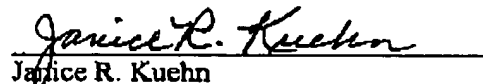
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Janice R. Kuehn